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HOUSE RESEARCH ORGANIZATION

daily floor report

Wednesday, April 17, 2013
83rd Legislature, Number 53
The House convenes at 10 a.m.

Six bills and one proposed constitutional amendment are on the daily calendar for second-reading consideration today. They are analyzed in today's *Daily Floor Report* and are listed on the following page.

The House will consider a Congratulatory and Memorial Calendar today.

The following House committees had public hearings scheduled for 8 a.m.: Agriculture and Livestock in Room E1.010; Economic and Small Business Development in Room E2.028; Public Health in Room E2.012; and Special Purpose Districts in Room E2.014.

The House Urban Affairs Committee has a public hearing scheduled for 10:30 a.m. or on adjournment in Room E2.016. The House State Affairs Committee has a public hearing scheduled for 1 p.m. or on adjournment in JHR 140. The following House committees have public hearings scheduled for 2 p.m. or on adjournment: Corrections in Room E2.010; Culture, Recreation, and Tourism in Room E2.026; Energy Resources in JHR 120; Select Committee on Federalism and Fiscal Responsibility in Room E2.036; and Higher Education in Room E1.014.

Bill Callegari
Chairman
83(R) – 53

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SUBJECT: Removing provisions for the SMEB from the constitution

COMMITTEE: Higher Education — committee substitute recommended

VOTE: 9 ayes — Branch, Patrick, Alonzo, Clardy, Darby, Howard, Martinez, Murphy, Raney

0 nays

WITNESSES: For — (*Registered, but did not testify:* Michelle Romero, Texas Medical Association)

Against — None

DIGEST: CSHJR 79 would propose an amendment to remove provisions for the State Medical Education Board (SMEB) and the State Medical Education Fund (SMEF) from the Texas Constitution.

The proposal would be presented to the voters at an election on Tuesday, November 5, 2013. The ballot proposal would read: "The constitutional amendment eliminating an obsolete requirement for a State Medical Education Board and a State Medical Education Fund, neither of which is operational."

SUPPORTERS SAY: CSHJR 79 would repeal the constitutional language authorizing the obsolete SMEB and SMEF. They were ineffective in their day, and their functions have been transferred to the more efficient Texas Higher Education Coordinating Board (THECB) and the Office of the Attorney General. The Legislative Budget Board (LBB) and the Sunset Advisory Commission recommended decades ago that they be abolished. The proposed amendment, along with the enactment of HB 1061 by Branch, would remove references to these defunct entities in the constitution and state law.

Throughout its history, SMEB has had a troubled existence and an unimpressive track record. In 1952, voters amended the constitution to direct the Legislature to create the SMEB and the State Medical Scholarship Fund to issue loans to medical students who agreed to practice in rural areas of Texas. In 1973, the Legislature enacted HB 683 by

Heatly, which created the board. In 1987, the LBB reported that only 11 percent of loan recipients since 1973 were practicing in rural Texas counties, and a mere 14 percent of those were in medically underserved areas.

Due to the program's ineffectiveness, no new loans have been issued since January 1988. That same year, the Sunset commission recommended that the SMEB be abolished and its functions transferred to the THECB. In 1989, the Legislature enacted SB 457 by C. Parker, which administratively attached the SMEB to the THECB. The board has since finished servicing existing loans and has turned all remaining loans over to the attorney general for default collection.

Lawmakers and the THECB now use loan repayment programs instead of direct loans to medical students as their primary method of attracting physicians to practice in rural Texas. These programs help already licensed physicians retire their student-loan debt through annual payments in return for practicing in rural and medically underserved parts of the state. Unlike the SMEB's loan-issuance programs, which often paid to educate students who never honored their agreement to practice in rural Texas, loan repayment programs have the advantage of paying for services already performed. Many of the loans issued by the SMEB have gone into default and have been deemed uncollectable, leaving taxpayers on the hook.

The cost associated with bringing a constitutional amendment to voters is minimal. In any off-year election, the Legislature places several constitutional amendments on the ballot, and the cost of adding one more amendment is negligible. Further, any effort to eliminate unnecessary provisions in the state's unwieldy constitution is worth the small fiscal note.

OPPONENTS SAY:

No apparent opposition.

NOTES:

According to the LBB, the cost of publishing the proposed resolution would be $108,921.

HB 1061 by Branch is related legislation that would repeal statutory authorization for the SMEB and the SMEF. It is set for the April 18 General State Calendar.

CSHJR 72 differs from the filed version of the bill by changing the proposed ballot language. The language in HJR 72 as introduced would have read “The constitutional amendment repealing the constitutional provision requiring the creation of a State Medical Education Board to administer a medical school loan program that is no longer funded.”

SUBJECT: Prohibiting texting while driving

COMMITTEE: Transportation — committee substitute recommended

VOTE: 6 ayes — Phillips, Martinez, Burkett, Fletcher, Guerra, Pickett

1 nay — Lavender

4 absent — Y. Davis, Harper-Brown, McClendon, Riddle

WITNESSES: For — Willie Barber, American Council of the Blind of Texas; Beaman Floyd, Texas Coalition for Affordable Insurance Solutions; Larry Johnson, Alamo Council for the Blind; F. Paul Lassalle, Houston Police Department; Brooke Mabry; Theodore Spinks, Texas Medical Association; Krista Tankersley; Shannon Teague; John Ulczycki, National Safety Council; Jennifer Zamora-Jamison, Decide2Drive.org; (*Registered, but did not testify:* Chase Bearden, Coalition of Texans with Disabilities; Andrea Chavez, Centerpoint Energy; Velma Cruz, Sprint Nextel; Jim Dow, Pioneer Natural Resources; Les Findeisen, Texas Motor Transportation Association; Frank Galitski, Farmers Insurance; Bo Gilbert, United Services Automobile Association; Jonna Kay Hamilton, Nationwide Insurance; Chris Hosek; Shanna Igo, Texas Municipal League; Dennis Kearns, Texas Railroad Association; Richard Lawson, Verizon; Myra Leo, Alliance of Automobile Manufacturers; Paul Martin, National Association of Mutual Insurance Companies; Carol McGarah, General Motors; Donald McKinney, Houston Police Department; Chris Miller, Association of Electric Companies of Texas, Inc.; Julie Nelson, The BG Group; Anne O'Ryan, AAA Texas; Thomas Ratliff, T-Mobile USA; Rebekah Schroeder, Texas Children's Hospital; Bryan Sperry, Children's Hospital Association of Texas; Mark Stine, BikeTexas; Steven Tays, Bexar County District Attorney's Office; Randy Teakell, AT&T; Joe Woods, Property Casualty Insurers Association of America)

Against — Terri Hall, Texas TURF

On — (*Registered, but did not testify*: John Barton, Texas Department of Transportation)

BACKGROUND:

Transportation Code, sec. 545.425 defines a "wireless communication device" as a device that uses a commercial mobile service, as defined by 47 U.S.C. Section 332. This term includes cell phones.

A driver of any age may not use a wireless communication device in a school crossing zone unless the vehicle is stopped or the driver uses a hands-free device. A political subdivision must post at the entrance to each school crossing zone a sign informing drivers that use of a wireless communication device within the zone is prohibited and can result in a fine.

A bus driver with a minor on board may not use a wireless communication device unless the vehicle is stopped. It is an affirmative defense to prosecution if the device is being used to make an emergency call.

Transportation Code, sec. 545.424 prohibits drivers under the age of 18 from using a wireless communication device except in an emergency. Drivers under the age of 17 who hold a restricted motorcycle license or moped license may not use a wireless communication device while driving a motorcycle or moped.

DIGEST:

CSHB 63 would make it a misdemeanor offense for a driver to use a handheld wireless communication device to read, write, or send a text, instant message, e-mail, or other text-based communication while driving, except while the vehicle was stopped.

The first offense would be punishable by a fine up to $100 and a second or subsequent offense by a fine up to $200. These penalties also would apply to the existing offenses of using a wireless communication device while driving for those under the age of 18 and using a wireless communication device while driving a motorcycle or moped with a restricted motorcycle or moped license for those under the age of 17.

It would be a defense to prosecution if the driver used a handheld wireless communication device to:

- look up a number or name to make a phone call;
- use voice operation, push-to-talk, or a hands-free device;
- use a global positioning system (GPS);
- report illegal activity or summon emergency help; or
- relay information between a driver and a dispatcher as part of their jobs, as long as the device was affixed to the vehicle.

The offense would not apply to drivers of authorized emergency or law enforcement vehicles who were acting in an official capacity or drivers licensed by the Federal Communications Commission who were operating a radio frequency device such as a ham radio.

CSHB 63 would preempt all local ordinances, rules or regulations relating to using a wireless communication device to read, write, or send a text-based communication while driving.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 63 would improve public safety by prohibiting drivers from texting, instant messaging, or e-mailing while their vehicle was moving. This would send a clear, easily enforceable message that texting while driving is dangerous, costly, and affects everyone on the road.

The bill would reduce texting-related crashes, fatalities and injuries, potentially saving lives. Thirty-nine U.S. states and the District of Columbia have enacted bans on texting while driving, and studies have shown that such laws have reduced crashes when coupled with enforcement and education. Texting while driving has injured and killed drivers, passengers, and innocent bystanders, costing Texas an estimated $684 million in 2011 based on national accident loss statistics.

To improve safety, the Legislature has passed laws requiring drivers to hold a license, have proof of auto insurance and inspection, and wear a seat belt. CSHB 63 is similar common-sense legislation that would increase safety for everyone on the road, including children, bicyclists, and those who are blind or have disabilities that could put them in harm's way with distracted drivers. Texting while driving bans are widely supported — 96 percent of people nationwide favor a ban on texting while driving.

While there are other forms of distracted driving, texting is one of the most dangerous forms, as it takes drivers' attention off the road and their hands off the wheel. By contrast, a driver could watch the road while talking to a passenger, and both could adjust the flow of conversation according to road conditions. A motorist who is texting takes his or her eyes off the road for an average of 4.6 seconds, the equivalent of driving the distance of a football field at 55 miles per hour. Studies show texting while driving is about six times more dangerous than intoxicated driving.

A driver who texts is eight to 23 times more likely to crash than a driver who is not texting.

The bill would give officers an additional tool to improve road safety for all Texans. Officers could enforce the bill by visually identifying texting drivers. Even if drivers held their phones under the dashboard, officers could see that a driver was looking down, slowing down, or that the light from the phone was shining on drivers' faces when they texted at night.

A statewide law combined with education and enforcement would be more effective than education alone. Statistics on seat belt use showed that Texans do what the law asks, but compliance does not happen overnight. When Texas passed the primary seat belt law in 1985, 15 percent of Texans used a seat belt. One year later seat belt use rose to nearly 67 percent, and the rate increased to nearly 94 percent in 2012, bolstered by education and stepped-up enforcement. While seat belt laws affect only the person wearing the belt, CSHB 63 would increase the safety of everyone on the road.

Across Texas, more than two dozen cities have passed laws regulating texting while driving, creating a patchwork that makes it difficult to follow the law, especially as drivers travel between jurisdictions. A uniform state law would be easier to understand and follow and would cover unincorporated areas that otherwise have no way to adopt a local ban.

In addition, by imposing fines, the bill would allow the state to apply for federal grant funding to support the bill's enforcement under the Moving Ahead for Progress in the 21st Century (MAP-21) Act.

OPPONENTS SAY:

CSHB 63 would be an unnecessary government effort to micromanage the behavior of adults. Increased information and education about the dangers of texting while driving would be a better solution than criminalizing the behavior.

Adults should be trusted to monitor their own behavior in the privacy of their vehicles. Current law already prohibits drivers under the age of 18 from texting or using a cell phone while driving and prohibits all drivers from using a wireless communication device in a school crossing zone unless the vehicle is stopped or the driver uses a hands-free device.

While well intentioned, CSHB 63 could detrimentally affect public safety.

One study found auto insurance claims increased in some states after a texting ban because drivers lowered cell phones to their laps to hide their texting, creating an even more hazardous driving situation.

A texting ban would be difficult to enforce, as law enforcement would not be able to identify the difference between a texting driver and a driver who was using a phone for another purpose. Law enforcement would not be able to identify texting at all if drivers lowered their phones to their laps. A ban also would unfairly burden drivers who were not texting, requiring them to prove they were using their phone for a purpose other than reading, writing, or sending a message.

CSHB 63 would single out texting from among many types of potential distractions while driving. Drivers are distracted by conversation, eating, grooming, and many other activities that decrease awareness and distract from safe driving.

The key to dissuading drivers from texting while driving is providing information and education about the dangers. Instead of implementing an ineffective government ban on texting while driving, a more successful initiative would include information in driving safety and driver's education courses, public service ads, and announcements.

OTHER OPPONENTS SAY:

A statewide law banning texting while driving could reduce or eliminate the ability of local governments to enact legislation specific to their unique needs. Although texting while driving may be a significant public safety concern in some cities, it may not be in others. Likewise, the bill would prevent municipalities from enacting stronger laws on texting while driving as they saw fit.

NOTES:

The companion bill, SB 28 by Zaffirini, was referred to the Senate Transportation Committee on January 28.

The committee substitute differs from the bill as filed by:

- adding a fine for the offense of reading, writing, or sending a text-based communication while driving;
- adding a penalty for the offense of using a wireless communication device while driving for drivers under the age of 18 and drivers under the age of 17 who hold a restricted motorcycle license or moped license;

- including drivers using a wireless communication device to report illegal activity or summon emergency help among those to whom a defense to prosecution would apply;
- removing a provision to allow localities to adopt a more stringent ordinance, rule, or regulation on texting while driving;
- removing citizens band (CB) radios and commercial two-way radio communication devices from the definition of "handheld wireless communication device."

SUBJECT: Providing notice of proposed municipal zoning changes to school districts

COMMITTEE: Land and Resource Management — favorable, without amendment

VOTE: 8 ayes — Deshotel, Frank, Goldman, Herrero, Paddie, Parker, Simpson, Springer

0 nays

1 absent — Walle

WITNESSES: For — (*Registered, but did not testify*: Ruben Longoria, Texas Association of School Boards)

Against — None

BACKGROUND: Current law requires that written notice be mailed to all property owners within 200 feet of a property subject to a potential zoning change at least 10 days before a public hearing on the proposed change.

DIGEST: HB 674 would require written notice be mailed to any school district in which a residential or multifamily zoning change was proposed 10 days before a hearing on the proposed change.

The bill would take effect September 1, 2013.

SUPPORTERS SAY: HB 674 would extend existing notification requirements for public hearings on zoning changes to include school districts affected by a possible change in residential or multifamily zoning. Many municipalities already send notice to school districts as a best practice. The bill simply would ensure that school districts were aware of proposals that likely would increase or decrease demands on their services. Districts routinely conduct population projections to plan for future enrollment, and HB 674 would be a sensible measure to ensure they received data about local developments that affected population.

OPPONENTS SAY: No apparent opposition.

SUBJECT: School district consolidation, annexation, and detachment petitions

COMMITTEE: Public Education — committee substitute recommended

VOTE: 10 ayes — Aycock, J. Davis, Deshotel, Dutton, Farney, Huberty, K. King, Ratliff, J. Rodriguez, Villarreal

0 nays

1 absent — Allen

WITNESSES: For — Roger Hepworth; Royce Young, Coleman ISD; (*Registered, but did not testify:* Ken McCraw, Texas Association of Community Schools; Don Rogers, Texas Rural Education Association)

Against — None

On — (*Registered, but did not testify:* David Anderson and Lisa Dawn-Fisher, Texas Education Agency)

BACKGROUND: Education Code, ch. 13 governs the creation, consolidation, and abolition of school districts.

In 2012, the Novice Independent School District (ISD) Board of Trustees closed its schools and voted to consolidate with neighboring Coleman ISD. The Coleman school board approved the consolidation, and both districts scheduled a consolidation election for November 6, 2012.

After the election date was set, a group of Novice ISD residents through a process outlined in Education Code, §13.051 petitioned to detach and annex more than half of the Novice ISD territory to neighboring Jim Ned Consolidated Independent School District (CISD). In September 2012, the Coleman ISD school board voted to oppose the detachment and annexation petition.

Voters in both the Novice and Coleman districts approved consolidation at the November election, followed shortly by the Jim Ned school board's rejection of the annexation petition. The consolidation became final in February 2013.

DIGEST:

CSHB 2016 would prohibit a school district board of trustees that had adopted a resolution in favor of consolidation into a single district with one or more other districts from receiving or considering a petition requesting detachment and annexation of district territory without the consent of each of the boards of trustees involved before consolidation took place or was disapproved at an election.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 2016 would allow school districts to safely enter into the consolidation process without worrying about loopholes in the Education Code that might derail the process. It also would protect the integrity of consolidation elections and could save school districts precious funds.

The bill would make consolidation resolutions between two or more school boards binding by preventing any of the other boards from accepting or acting on a petition for detachment and annexation until the consolidation process was either completed or rejected by voters. This would make clear that consolidation was a separate process from detachment and annexation and that a pending consolidation must be resolved first. CSHB 2016 would prevent future situations that could be confusing to voters facing a consolidation election, not to mention disruptive and unsettling to students and communities.

Requiring separate consideration of proposed consolidation and detachment/annexation measures would not affect taxpayer rights. Detachment and annexation petitions are not an appropriate tool to stall or block a consolidation election. Instead, voters who oppose consolidation can attend school board meetings and register their disapproval before the board sets an election.

The bill would prevent a repeat of the recent dispute that pitted communities and neighbors against each other in Coleman and Taylor counties. Despite a binding resolution and a confirmed election date for consolidation of the Novice and Coleman school districts, a group of Novice ISD residents attempted to detach and annex more than half the taxable land in Novice through a petition process. This could have resulted in Coleman ISD inheriting Novice ISD's debt, a majority of students, and

a complicated rural bus route, while the majority of taxable land would have gone to Jim Ned CISD.

The Coleman and Novice districts eventually consolidated, but the dispute cost the districts in legal fees and time. It also required the direct involvement of the commissioner of education and the secretary of state when Novice ISD considered canceling the consolidation election. CSHB 2016 would head off future disputes of this nature.

OPPONENTS SAY:

CSHB 2016 could infringe upon taxpayers' rights by freezing detachment and annexation petitions when a school board was moving forward on consolidation. This is a critical juncture at which district residents might want to consider an alternative to consolidation. While a detachment and annexation petition could complicate a pending consolidation, it is important that taxpayers and parents of affected schoolchildren have the opportunity to express their desire for a different course of action.

NOTES:

CSHB 2016 differs from the bill as introduced in that the committee substitute would prevent any school district board of trustees that had adopted a resolution in favor of consolidation, rather than only one that had entered into a local consolidation agreement, from receiving and considering a petition to detach and annex territory without the consent of each of the boards involved before either consolidation or disapproval of consolidation at an election.

SUBJECT: Exempting property from taxation at defense base development authorities

COMMITTEE: Defense and Veterans' Affairs — favorable, without amendment

VOTE: 8 ayes — Menéndez, R. Sheffield, Collier, Farias, Frank, R. Miller, Schaefer, Zedler

0 nays

1 absent — Moody

WITNESSES: For — Wayne Alexander and Chris Shields, Port San Antonio; David Marquez, County of Bexar; (*Registered, but did not testify*: Gabe Farias, West San Antonio Chamber of Commerce; Marshall Kenderdine and Luis Saenz, City of San Antonio)

Against — None

On — (*Registered, but did not testify*: Tim Wooten, Comptroller of Public Accounts)

BACKGROUND: Local Government Code, ch. 379B authorizes a municipality to create a defense base development authority at a base closed by the Defense Base Closure and Realignment Commission.

Tax Code, secs. 11.01 and 21.02 stipulate that tangible property that is temporarily in the state is not subject to taxation.

DIGEST: HB 1348 would stipulate that a commercial aircraft under construction within a defense base development authority's jurisdiction was temporarily within the state for the purposes of Tax Code, secs. 11.01 and 21.02, and therefore exempt from taxation. Tangible personal property within the authority also would be exempt from taxation if the owner demonstrated to the tax appraisal district that the property was designed to be attached or incorporated into the aircraft under construction.

The bill would take effect January 1, 2014, and would apply only to ad valorem taxes imposed for a tax year beginning on or after that date.

SUPPORTERS SAY:

HB 1348 would amend the law to specify that commercial aircraft under construction at defense base development authorities would not be taxable property. Recognizing these types of aircraft as being temporarily in the state for construction would relieve companies of a potentially large tax burden and boost business, create jobs, and allow Texas to compete with other states in attracting commercial aerospace operations.

Defense base development authorities, which have sprung up at former military installations to reinvigorate the economic viability of an area, attract commercial aircraft construction from companies such as Boeing and Lockheed Martin. This construction typically includes adding instrumentation and wiring as well as interior work before the aircraft is fit for service. The aircraft and parts are in the state only for this temporary construction period. HB 1348 would clarify that the commercial aircraft under construction was located temporarily in Texas, while providing a process for a property owner to demonstrate that the associated parts also should be exempted from taxation.

HB 1348 would help authorities attract and keep more aircraft construction companies. These companies are drawn to the infrastructure the authorities can provide, and they bring with them a highly skilled workforce, which benefits a community's tax base. At Port San Antonio, an authority located at former Kelly Air Force Base, 14 aerospace-related firms combined employ about 4,000 people and generate about $1.5 billion for the economy. The bill would help unlock more investment at Port San Antonio and other defense base development authorities that could yield more jobs. Such long-term investment, which is key for an authority to thrive, would outweigh any projected loss in revenues that resulted from exempting commercial aircraft and their related parts from the rolls of taxable property.

A similar provision in the Tax Code already provides an exemption for watercraft construction, and HB 1348 would make that language applicable to aircraft construction as well. The bill would not harm the discretion given to the state's chief appraisers — it merely would clarify the status of commercial aircraft under construction at an authority. Appraisers still would have the final say in determining whether tangible property associated with the airplane was taxable.

OPPONENTS SAY:

HB 1348 could result in the loss of tax revenue for the state and local governments at a time when budgets are lean. The Legislative Budget

Board (LBB) projected that the exemptions in HB 1348 would cost the state $399,000 in fiscal 2014-15, with further losses in tax revenue to local governments and a pair of school districts.

HB 1348 inappropriately would remove the discretion of local tax appraisers to determine whether a commercial aircraft under construction at an authority was located temporarily in the state and whether it was taxable. Tangible property determined by a chief appraiser to be in the state temporarily already is exempt from taxation. Such decisions should remain in the hands of local authorities and not prescribed by state law.

NOTES:

The LBB's fiscal note estimates a cost from the bill of $399,000 in general revenue through fiscal 2014-15 resulting from property tax revenue loss to local units and to the state through the school funding formula.

SUBJECT: Enhanced penalty for concealing child abuse

COMMITTEE: Human Services — favorable, without amendment

VOTE: 9 ayes — Raymond, N. Gonzalez, Fallon, Klick, Naishtat, Rose, Sanford, Scott Turner, Zerwas

0 nays

WITNESSES: For — Diana Martinez, TexProtects, Texas Association for the Protection of Children; (*Registered, but did not testify:* Lon Craft, TMPA; Michelle Dooley, Albert Metz, Heiwa Salovitz, Joe Tate and Sarah Watkins, Community Now; Stephanie LeBleu, Texas CASA; Susan Milam, National Association of Social Workers/Texas Chapter)

Against — None

On — *(Registered, but did not testify:* Elizabeth "Liz" Kromrei, Department of Family and Protective Services)

BACKGROUND: Family Code, sec. 261.101 requires professionals who suspect a child has been or may be abused or neglected or has died of abuse or neglect to personally report their suspicions within 48 hours. Reports must be made to a state or local law enforcement agency, the Department of Family and Protective Services, or the state agency in charge of the facility in which the suspected abuse or neglect occurred.

"Professionals" are defined as those licensed or certified by the state or who are employees of a facility licensed, certified, or operated by the state and who have direct contact with children in the normal course of their official duties. This includes teachers, nurses, doctors, day-care employees, employees of a health care facility that provides reproductive services, juvenile probation officers, and juvenile detention officers.

Under Family Code, sec. 261.107, it is a state-jail felony (180 days to two years in a state jail and an optional fine of up to $10,000) to knowingly make a false report of child abuse. Under sec. 261.109, it is a class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000) to knowingly fail to report suspected child abuse.

DIGEST:

HB 1205 would elevate to a state jail felony the penalty for a professional who knowingly failed to report child abuse or neglect with the intent to conceal the abuse or neglect.

SUPPORTERS SAY:

HB 1205 would make the punishment fit the seriousness of the crime when a professional failed to report child abuse with the intent to conceal it.

Recent cases, such as the 2011 Penn State University sexual abuse scandal, show the severe harm that results from covering up child abuse. This bill would rightly recognize that concealing child abuse could have an even more devastating effect on children than knowingly not reporting it and warrants increased penalties.

The enhanced punishment in HB 1205 would serve as a deterrent. Professionals may feel direct or indirect pressure to protect the reputation of their workplace, institution, or profession and may be inclined to prevent incidents of abuse from coming to light. Making this action a felony would reduce the likelihood of concealment.

Currently, falsely reporting child abuse carries a penalty greater than intentionally not reporting it, even though covering up abuse is much more likely to endanger children. Enhancing the punishment for failure to report would bring parity to these penalties.

HB 1205 would have no significant impact to the state's correctional agency resources. According to the Department of Public Safety, between 2006 and 2011 there was an average of six convictions per year among both professionals and non-professionals for failing to report child abuse. Increasing the penalty for a professional who concealed child abuse would send a clear signal about the seriousness of these crimes and encourage prosecutors to more aggressively pursue them.

OPPONENTS SAY:

HB 1205 would be an unnecessary and counterproductive expansion of prosecutorial discretion for symbolic effect only.

Under current law, professionals who fail to report child abuse are prosecuted. Despite recent high-profile cases, professionals seldom fail to report child abuse and virtually never intend to conceal the abuse or neglect. There is no evidence that enhancing the penalty for concealing

abuse would increase prosecutions, nor that prosecutors do not already prioritize reports of suspected child abuse. For example, following the Penn State scandal, arrests in Texas for failing to report child abuse increased to 42 in 2012 from an average of 22 between 2005 and 2011, an indication that prosecutors have responded to a possible increase in the reporting of cases of child abuse.

Current law also adequately punishes professionals who fail to report child abuse. Knowingly failing to report child abuse was raised to a class A misdemeanor in 2009 from a class B misdemeanor (up to 180 days in jail and/or a maximum fine of $2,000). Filing a false report of child abuse is a separate offense, and its enhancement to a state jail felony in 2005 should not affect the determination of the proper penalty for intending to conceal child abuse.

By making intent to conceal child abuse a felony, HB 1205 could cause professionals to stop using their discretion, even in cases that were nuanced and required difficult judgment calls to balance a child's welfare with preserving relationships with the child and his or her caregivers.

HB 1205's vague language would risk imposing unfairly severe sentences. The bill would not define "intended to conceal," and therefore would increase the possibility that professionals could be prosecuted for concealment that did not interfere with an investigation.

By contrast, increasing training for professionals and non-professionals to identify and report child abuse and neglect would improve child safety without risking prosecutorial overreach.

OTHER OPPONENTS SAY:

While well intentioned, HB 1205 might not be used by prosecutors to pursue those who concealed child abuse. Because the terms "intended to conceal the abuse and neglect" would be undefined and vague, prosecutors might not risk an acquittal by trying to prove such a case and could instead fall back on the current class A misdemeanor for failing to report abuse and neglect.

SUBJECT: Voluntary donations to the Glenda Dawson Donate Life-Texas Registry

COMMITTEE: Transportation — committee substitute recommended

VOTE: 9 ayes — Phillips, Martinez, Burkett, Fletcher, Guerra, Harper-Brown, Lavender, Pickett, Riddle

0 nays

2 absent — Y. Davis, McClendon

WITNESSES: For — Pam Silvestri, Donate Life Texas; *(Registered, but did not testify:* Marisa Finley, Scott & White Center for Healthcare Policy; David A. Marwitz, LifeGift; Marcus Mitias, Texas Health Resources; Laurie Reece, Texas Transplantation Society; Melody Chatelle*)*

Against — None

On — Jann Melton-Kissel, Department of State Health Services; Michael Terry, Department of Public Safety; *(Registered, but did not testify:* Randy Elliston, Texas Department of Motor Vehicles*)*

BACKGROUND: The Glenda Dawson Donate Life Texas Registry is a database of individuals who have officially provided authorization to donate organs, tissues, or eyes upon their deaths.

Donor registration can be done online at the Donate Life Texas website, local Department of Public Safety (DPS) offices when applying for or renewing a driver's license or identification card, or through the Department of Motor Vehicles when renewing registration. The program is funded through a $1 voluntary contribution that can be made when renewing a driver's license or ID card or registering a motor vehicle.

Money from the voluntary contributions is appropriated to the Department of State Health Services (DSHS), then disbursed to Donate Life Texas Inc., a nonprofit organization that operates the registry.

DIGEST: The bill would create the Glenda Dawson Life-Texas Registry trust fund outside of the state treasury to be held by the comptroller and administered

by the Department of State Health Services (DSHS). The trust would be funded by $1 voluntary contributions collected by county assessor-collectors during motor vehicle registration transactions and collected by the Department of Public Safety (DPS) during driver's license and identification card transactions.

The bill would require a space on application forms and registration renewal notices for people to note a desire to donate $1. It would allow county assessor-collectors and the DPS to deduct reasonable expenses up to 5 percent of collections for administering the collection of contributions.

CSHB 519 would transfer the administration of the Glenda Dawson Donate Life-Texas Registry from the Department of State Health Services (DSHS) to a designated nonprofit organization (Donate Life Texas, Inc.). The bill also would provide that the money be disbursed at least monthly directly to the nonprofit organization rather than through DSHS.

Money received by the nonprofit could be used only to manage the registry, provide donor education, and promote donor awareness. The nonprofit would be required to submit an annual report to the Legislature, comptroller, and DSHS, including the total amount received from the voluntary contributions.

The bill would repeal requirements for the nonprofit organization to submit an annual report to DSHS on the number of donors in the registry and their demographics, as well as requirements for DSHS in contracting for the registry program. It would remove a provision prohibiting the nonprofit organization from charging a fee for costs related to operating and maintaining the registry.

CSHB 519 would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 519 would solve an ongoing problem stemming from state regulations that disallow the use of donated dollars for programs that would help incorporate national best practices for organ donor registries. Because these are not tax dollars but funds contributed to increase donor registrations and increase lives saved by organ donation, they should not be bound by state regulations or by what DSHS deems allowable. They

should be used to support efforts that have proven successful and that align with national best practices to increase donation.

Concerns about the involvement of DSHS in the registry could be addressed through amendments. The author intends to offer an amendment that would remove duties from DSHS, such as administration of the trust fund and designation of the nonprofit organization, and transfer them to DPS. Another amendment would replace references to the tax assessor-collector with the Department of Motor Vehicles.

OPPONENTS SAY:

While the bill would take steps to remove the Department of State Health Services (DSHS) from the administration of the registry, DSHS still would be responsible for designating the nonprofit organization that administered the registry. DSHS also would be the administrator of the trust fund. Transferring these duties to an entity involved in donor registration, such as the Department of Public Safety (DPS), would be more appropriate. Continuing to involve DSHS in a limited capacity would place an administrative burden on the department and require them to make decisions and have oversight over a program with which they have little interaction.

NOTES:

The committee substitute differs from the bill as introduced in that it would:

- create the Glenda Dawson Life-Texas Registry trust fund outside of the state treasury;
- transfer the administration of the Glenda Dawson Donate Life Texas Registry from the Department of State Health Services (DSHS) to a designated nonprofit organization;
- require that applications for motor vehicle registration include a space for the $1 contribution;
- limit the voluntary contribution to $1;
- limit the amount that tax assessor-collectors and DPS would be allowed to deduct for administration expenses to five percent of the money collected;
- expand the use of the money collected for the management of the registry to also include donor education and donor awareness; and
- repeal requirements for the nonprofit organization to submit an annual report to DSHS regarding the number of donors in the

registry and their demographics and requirements for DSHS in contracting for the registry program.

According to the LBB's fiscal note, CSHB 519 would have a negative impact on general revenue of $655,000 through the end of fiscal 2015. Under current law, collections are deposited to General Revenue Fund 0001. Future collections would be deposited to the new fund created by the bill.

The companion bill, SB 1815 by Zaffirini, was reported favorably from the Senate Transportation Committee on April 8 and recommended for the Local and Uncontested Calendar.

Rep. Zerwas plans to offer a floor amendment that would remove duties from the Department of State Health Services, such as administration of the trust fund and designation of the nonprofit organization, and transfer them to the Department of Public Safety. Another amendment would replace references to the tax assessor-collector with the Department of Motor Vehicles.